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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1289

NATIONAL RAILROAD PASSENGER CORPORATION, CENTRAL OF GEORGIA RAILWAY COMPANY, and SOUTHERN RAILWAY COMPANY, *Petitioners,*

v.

NATIONAL ASSOCIATION OF RAILROAD PASSENGERS, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR PETITIONERS

WILLIAM O. BITTMAN
CURTIS E. VON KANN
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
Attorneys for Petitioner National Railroad Passenger Corporation

CHARLES A. HORSKY
WILLIAM D. IVERSON
888 16th Street, N.W.
Washington, D.C. 20006
Attorneys for Petitioners Central of Georgia Railway Company and Southern Railway Company

Of Counsel:
HOGAN & HARTSON
COVINGTON & BURLING

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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BRIEF FOR PETITIONERS

ORDER AND OPINION BELOW

The unreported order of the District Court dismissing the cause appears at page 19 of the Single Appendix (SA). The opinion of the Court of Appeals is reported at 475 F.2d 325 and appears at SA 20.

JURISDICTION

The judgment and opinion of the Court of Appeals was rendered on January 5, 1973.[1] On February 9, 1973, that court stayed the issuance of its mandate for

[1] On January 10, 1973, the opinion was amended to correct a minor error, i.e., a reference at SA 23 to "Birmingham, Georgia" was changed to "Birmingham, Alabama."

a period of thirty days, and on March 9, 1973 the stay was extended to March 22, 1973. (SA 57). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Can all passengers and other allegedly aggrieved persons maintain actions in the District Courts to enjoin supposed violations of the Rail Passenger Service Act of 1970 (the "Amtrak Act"), 45 U.S.C. § 501 *et seq.* (1970), *as amended,* (Supp. II, 1972), despite the provision in Section 307 of the Act that the District Courts shall have jurisdiction to grant such relief "upon petition of the Attorney General of the United States or, in a case involving a labor agreement, upon petition of any employee affected thereby, including duly authorized employee representatives"?

STATUTORY PROVISION INVOLVED

Section 307 of the Amtrak Act provides as follows:

> *Jurisdiction of the District Courts of the United States to Impose Sanctions.*
>
> (a) If the Corporation or any railroad engages in or adheres to any action, practice, or policy inconsistent with the policies and purposes of this chapter, obstructs or interferes with any activities authorized by this chapter, refuses, fails, or neglects to discharge its duties and responsibilities under this chapter, or threatens any such violation, obstruction, interference, refusal, failure, or neglect, the district court of the United States for any district in which the Corporation or other person resides or may be found shall have jurisdiction, except as otherwise prohibited by law, upon petition of the Attorney General of the United States or, in a case involving a labor agreement, upon petition of any employee affected

thereby, including duly authorized employee representatives, to grant such equitable relief as may be necessary or appropriate to prevent or terminate any violation, conduct, or threat.

(b) Nothing contained in this section shall be construed as relieving any person of any punishment, liability, or sanction which may be imposed otherwise than under this chapter. [45 U.S.C. § 547].

STATEMENT OF THE CASE

Proceedings Below.

This is an action to enjoin the discontinuance of certain trains previously operated by the Central of Georgia Railway Company. Central discontinued the trains under authority of the Amtrak Act after entering into a contract with the National Railroad Passenger Corporation (Amtrak) for assumption by Amtrak of Central's intercity rail passenger service responsibilities.[2] Respondent National Association of Railroad Passengers (NARP) alleges that this contract does not comply with the terms and purposes of the Amtrak Act. (Complaint, SA 8, 9). The suit was said to be brought "pursuant to 28 U.S.C. § 1331, 1337, and 45 U.S.C. 501 *et seq.*, and particularly sections 564(a) and 642 of Title 45." (SA 9).

On May 5, 1971, the United States District Court for the District of Columbia dismissed the complaint on the ground, *inter alia*, "that the plaintiff does not [have] standing to maintain this action under Section 307 of the Rail Passenger [Service] Act of 1970." (SA 19). On January 5, 1973, the Court of Appeals

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[2] The principal provisions of the Act governing discontinuances are described at pages 7-8, *infra*.

reversed and remanded the case to the District Court for an adjudication on the merits. The court concluded that standing to sue Amtrak and the defendant railroads should be determined by the same three-part test that governs standing to seek judicial review of governmental administrative actions and that the first two elements of this test—(1) whether NARP has alleged that it suffered injury in fact and (2) whether it is arguably within the zone of interests to be protected by the legislation—are satisfied in the present case. (SA 25-27).

As to the third element of the test, the Court of Appeals could see no convincing evidence that Congress intended to preclude the maintenance of lawsuits by all aggrieved parties. Although petitioners argued that the language, legislative history, and purposes of the Act clearly manifested a legislative intent to allow only the Attorney General to bring enforcement actions in cases not involving labor agreements, the court did not believe that this evidence was sufficient to overcome "the strong presumption in favor of judicial review" which the court considered applicable. (SA 28).

Finally, after completing the "standing" analysis described above, the court held that NARP's right to sue could also be sustained if the case were analyzed in terms of jurisdiction or the existence of a private cause of action.[3] (SA 43-46).

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[3] In the same opinion the Court of Appeals reversed the judgment of the District Court in *Potomac Passengers Association* v. *Chesapeake & Ohio Railway Co., et al., opinion sub nom. Congress of Railway Unions* v. *Hodgson,* 326 F. Supp. 68 (D.D.C. 1971), consolidated with this case on appeal. The court held that Section 307 was not involved in that case since the suit, properly con-

Background of the Amtrak Act.

In 1969 and 1970 both houses of Congress held hearings which indicated that the nation was faced "with the immediate threat of the complete curtailment of rail passenger service."[4] In 1929 there were approximately 20,000 passenger trains in operation in the United States; in 1969 there were 450. Ever since 1930, except for the World War II period when gasoline rationing forced many travelers off the highways, operation of passenger trains has been generally unprofitable.[5]

After World War II, resumption of automobile production, expansion of highway facilities, and the tremendous growth of air travel, all generously aided by federal financial assistance, took increasing numbers of passengers from the railroads. (S. Rep. 91-765, p. 2). By the mid 1950's the staggering losses from passenger operations were no longer sufficiently absorbed by freight business to make continued passenger service economically viable, and the railroads turned with increasing frequency to state regulatory commissions for authority to discontinue little-used passenger trains. There, according to the Senate Report,

> They met with considerable resistance; trains which clearly served no useful purpose were either

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ceived, was not one for violation of the Amtrak Act but rather an action for a declaratory judgment that certain trains were "commuter" rather than "intercity" and that their discontinuance was therefore not governed by the Amtrak Act. The correctness of that decision is not at issue here.

[4] H.R. Rep. No. 91-1580, 91st Cong., 2nd Sess. (hereafter cited as "H.R. Rep. 91-1580"), p. 2 (1970).

[5] S. Report No. 91-765, 91st Cong., 2nd Sess. (hereafter cited as "S. Rep. 91-765"), p. 2 (1970).

> required to be kept in operation or were allowed to be discontinued only after protracted administrative and judicial proceedings. [S. Rep. 91-765, p. 2].

In 1958, in an effort to reduce the losses on passenger train operations, Congress enacted Section 13a of the Interstate Commerce Act (49 U.S.C. § 13a) authorizing railroads to petition the Interstate Commerce Commission for permission to discontinue passenger trains. While Section 13a temporarily eased the financial drain on the railroads, the number of passenger trains continued to decline due, in part, to the interstate highway program (initiated in 1956), the jet aircraft (1958), the Post Office's conversion from enroute sorting of mail in railway cars to stationary sorting at section centers (1967), and the deterioration of passenger services on some railroads. (S. Rep. 91-765, p. 2).

By 1970 Congress had concluded that rail passenger service was an essential component of a balanced national transportation system, particularly in light of increasing congestion of the highways and airways and consequent increases in fatalities and pollution. (H.R. Rep. 91-1580, p. 2; S. Rep. 91-765, pp. 2-3). It had also concluded that, while the argument about the causes of passenger train declines could go on indefinitely,

> if it continues it will be an argument only over the past and the last passenger train will be in a museum. Positive action and a completely new direction is required—and urgently required—now. [H.R. Rep. 91-1580, p. 3].

To save any passenger trains at all, Congress found, would require a paring of uneconomic routes since "a large number of them hold no promise for financial

success in the foreseeable future." It would also require the establishment of a quasi-public National Railroad Passenger Corporation which could manage rail passenger operations on a unified, national basis and take innovative and decisive action to improve such operations and revitalize rail passenger train service throughout the United States. (H.R. Rep. 91-1580, pp. 1, 3).

STRUCTURE OF THE ACT.

On October 14, 1970, Congress enacted the Rail Passenger Service Act of 1970. The Act authorized creation (45 U.S.C. § 541) of a National Railroad Passenger Corporation ("Amtrak") to provide intercity rail passenger service between points designated by the Secretary of Transportation as components of a "basic national system" of intercity rail service. (45 U.S.C. §§ 501, 521). Though subsidized by the federal treasury and vested with a broad mandate to reorganize intercity rail service (45 U.S.C. § 545), Amtrak is not "an agency or establishment of the United States Government." Amtrak is to act boldly and decisively, "employing innovative operating and marketing concepts so as to fully develop the potential of modern rail service in meeting the Nation's intercity passenger transportation requirements." (45 U.S.C § 541).

Under the Act, Amtrak was authorized to contract with any railroad, on or before May 1, 1971, and between March 1, 1973 and January 1, 1975, to relieve that railroad of its entire responsibility for provision of intercity rail passenger service. Upon entering into such a contract, the railroad could discontinue any intercity train simply by filing with the Interstate Commerce Commission a thirty-day notice of intent to

discontinue. (45 U.S.C. § 561(a)(1).[6] Railroads which did not enter such contracts are forbidden to discontinue any intercity passenger trains before January 1, 1975, and can do so thereafter only by following the discontinuance procedures in Section 13a of the Interstate Commerce Act. (45 U.S.C. § 564(a)). Amtrak was required to provide the service included within the "basic system" until July 1, 1973, after which it could effect discontinuances as provided in the Act. (45 U.S.C. § 564(b)). If "consistent with prudent management," Amtrak can also provide intercity rail passenger service in excess of the basic system. It can, however, discontinue such additional service at any time, except that any excess service provided for a continuous period of two years becomes part of the "basic system." (45 U.S.C. §§ 563(a), 564(b)(2)).

In establishing the Amtrak program, Congress recognized[7] that (1) a number of uneconomic trains would have to be eliminated and (2) one of the most difficult aspects of the program would be deciding which trains to eliminate. In order to insure that these decisions were wisely made, Congress prescribed (45 U.S.C.

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[6] The Central of Georgia trains involved in this litigation were discontinued under this provision on May 1, 1971. They consisted of two daily trains between Atlanta and Savannah, Georgia and two trains between Albany, Georgia and Birmingham, Alabama which ran on alternate days.

[7] "[A] rational reduction of the present system will be required to save *any* passenger service. The remaining service must be organized into a cohesive system requiring a management which takes into consideration the needs and abilities of the entire system which will be a replacement for the diverse managements of the present unintegrated and in many instances unwanted (by management) passenger service." [H.R. Rep. 91-1580, p. 3].

§ 521) specific policy factors to be considered in the designation of the basic system [8] and further provided that the basic system would not become final until the Secretary of Transportation had responded in writing to all recommendations he received from the Interstate Commerce Commission, the various State Commissions, the representatives of the railroads, and railroad labor organizations concerning the passenger service to be maintained. (45 U.S.C. § 522).

Finally, to insure that this program would be carried out in accordance with the terms and purposes of the Act, Congress provided in Section 307 (45 U.S.C. § 547) an enforcement procedure largely borrowed from the Comsat Act.[9] Section 307(a), the focus of the present case, provides that the Attorney General of the United States and, in cases involving labor agreements, affected employees and their representatives may petition the District Courts to enjoin any action by Amtrak or a railroad which violates the Amtrak Act or threatens to obstruct its purposes. Section 307(b) indicates

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[8] In initially deciding which trains to include in the basic system, the Secretary of Transportation utilized an interrelated set of eight criteria:

(1) The Nation's total transportation needs.
(2) Demand for the particular service.
(3) Cost of the particular service.
(4) The need for an integrated national rail network.
(5) Population of the points served.
(6) Profitability of the particular service.
(7) Potential for flexible service adjustments by Amtrak.
(8) Capital improvements required by the service.

(See pages 81-82 of Exhibit A to this brief.)

[9] See Section 403 of the Communications Satellite Act of 1962 (47 U.S.C. § 743) set out in footnote 39, pp. 36-37, *infra*.

that the section leaves unaffected any causes of action which arise other than from a violation of the Act.[10]

SUMMARY OF ARGUMENT

Section 307 of the Amtrak Act provides only for enforcement suits by the Attorney General in non-labor cases such as this. By the established construction principle that specific Congressional expression of one remedy excludes other remedies not expressed, Section 307 allows such suits *only* when brought by the Attorney General, and not by any "aggrieved person." The Court of Appeals rejected this statutory interpretation despite the legislative history that strongly supports it.

During the hearings on the Amtrak Act, representatives of organized labor proposed and vigorously argued for an amendment to Section 307 which would, *inter alia,* have authorized suits by any "aggrieved person." The Secretary of Transportation acquiesced in certain aspects of the suggested amendment (principally, making Section 307 applicable to railroads as well as Amtrak), but opposed the proposal to allow suits by any "aggrieved persons." He recommended that Section 307 permit suits only by the Attorney General and employees and their authorized representatives. Congress followed the Secretary's recommendations carefully and precisely. It redrafted Section 307 to incorporate the suggestion in which he acquiesced but rejected labor's proposal to allow suits by any "aggrieved person" and instead adopted his alternative formulation.

The decision below is also erroneous because its interpretation of Section 307 would severely hamper

[10] Thus, suits for personal injuries allegedly caused by negligent operation of Amtrak trains are not barred by the Act.

Amtrak's achievement of its Congressional mandate to create and administer a viable national system of rail passenger service. Private suits by any railroad passenger or other "aggrieved person" could, even if unsound on their merits, result in restraining orders or preliminary injunctions that would force Amtrak to continue the operation of uneconomic trains. This would cost Amtrak (and thus the federal treasury) substantial sums of money and would seriously disrupt Amtrak's closely coordinated plans for operating an integrated national system of intercity rail service.

The court below erred in relying on a novel theory that the specific jurisdictional limits imposed by Section 307 of the Amtrak Act could be disregarded because of the general jurisdictional grant of 28 U.S.C. § 1337 regarding controversies arising under statutes regulating interstate commerce. But that theory overlooks the established principle that specific statutory provisions must, when applicable, take precedence over more general provisions in the same or a different statute. Furthermore, even if Section 1337 could confer jurisdiction on the District Court in a suit such as this, that general jurisdictional statute merely allows adjudication of a cause of action arising under some other statute regulating commerce, and does not itself give rise to a cause of action. The Amtrak Act creates no private cause of action under which persons other than the Attorney General may bring suit to enjoin its alleged violation. Since the Attorney General and other legislative and executive institutions responsible for monitoring Amtrak's activities are quite capable of insuring Amtrak's full compliance with the Act, there is no reason in this case to create a private cause of action by implication.

ARGUMENT

I. THE DECISION BELOW MISCONSTRUES THE PLAIN LANGUAGE AND THE LEGISLATIVE HISTORY OF SECTION 307.

A. The Language of Section 307 Clearly Precludes Private Parties Other Than Employees and Their Representatives from Suing Amtrak or a Railroad for Alleged Violations of the Act.

Section 307 of the Amtrak Act identifies only the Attorney General as a proper party to sue for enforcement of the Act in non-labor cases.[11] It is a well-established principle of statutory construction that, where Congress has expressly specified one party or remedy, courts will not expand the coverage of the statute to include other parties or remedies. As Section 307 specifically authorizes suit by the Attorney General, this principle indicates that he is the *only* proper plaintiff in enforcement actions not involving labor agreements.

Courts have traditionally relied on this principle as an aid to statutory construction, particularly when—as is the case here—it is supported by legislative history revealing a clear intent to exclude other parties or meanings. *See, e.g., Botany Worsted Mills* v. *United States*, 278 U.S. 282, 289 (1929); *Maiatico* v. *United States*, 302 F. 2d 880, 886 (D.C. Cir. 1962); *United States* v. *Chicago Title and Trust Co.*, 242 F. Supp. 56, 65 (N.D. Ill. 1965); *Ex Parte York County Natural Gas Authority*, 238 F. Supp. 964, 979 (W.D. S.C. 1965); *Anderson* v. *Gladden*, 188 F. Supp. 666, 679 (D. Ore. 1960). As noted in *McDonald* v. *Board of Election Commissioners*, 277 F. Supp. 14, 17 (N.D. Ill. 1967, it is "a rule of statutory construction that where a statute enumerates persons affected, it must

[11] The full text of Section 307 is set out at pages 2-3, *supra*.

be construed as excluding from its effect all those not expressly mentioned."[12]

The court below rejected this analysis on the ground that "whatever superficial appeal the maxim may have, . . . it is only an aid to statutory construction, not a rigid rule of law." (SA 29). The court was certainly correct that the *expressio* principle should not be applied blindly, but neither logic nor the authorities cited by the court suggest that the principle should be rejected for no reason at all. Those authorities point out only that the doctrine "can never override clear and contrary evidence of Congressional intent." *Neuberger* v. *C.I.R.*, 311 U.S. 83, 88 (1940). As stated by the Court of Appeals for the First Circuit in *Massachusetts Trustees of Eastern Gas & Fuel Assoc.* v. *United States*, 312 F. 2d 214, 220 (1st Cir. 1963), *aff'd* 377 U.S. 235 (1964), "whether the specification of one matter means the exclusion of another is a matter of legislative intent for which one must look to the statute as a whole."

More generally, as a matter of sound statutory interpretation, there must be some recognized guidelines for construction so that courts, legislators, and affected citizens can agree on how legislative enactments will be applied in particular cases. Petitioners do not argue that the *expressio* principle is an absolute and irrebutable rule which answers all questions about the reach of statutory provisions. But the principle has considerable force because of its intrinsic logic and frequent past applications and should not be

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[12] Courts sometimes make shorthand reference to this principle through the maxim *expressio unius est exclusio alterius*. See *United States* v. *Chicago Title and Trust Co.*, *Ex Parte York County Natural Gas Authority*, and *Anderson* v. *Gladden*, *supra*.

disregarded unless independent sources within the legislative history demonstrate that Congress did not in fact intend to exclude other parties or remedies than those specified. In the present case, the legislative history, far from suggesting that the principle is inapplicable, strongly supports the inference that Congress *did* intend to exclude other parties from initiating enforcement actions.

B. The Legislative History of Section 307 Reveals Congress' Intent To Limit the Power To Enforce the Amtrak Act to the Attorney General.

In the context of this case, the significant fact in the legislative history is that Congress considered but rejected a proposed amendment to Section 307 that would have authorized any aggrieved person to sue to enjoin violations of the Act.

The original draft of the bill, considered by the House Interstate and Foreign Commerce Committee in June 1970, provided [13] that the District Courts would have jurisdiction to entertain suits against Amtrak (but not individual railroads) "upon petition of the Attorney General of the United States or, in a case involving a labor agreement, upon petition of any individual affected thereby . . .". At the hearings spokesmen for organized labor urged that the bill be amended to allow actions against railroads as well as Amtrak and to permit suits by "any person adversely affected or aggrieved thereby, including the represen-

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[13] Supplemental Hearings on H.R. 17849 and S.3706 before the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce, 91st Cong., 2d Sess., Serial 91-62 (1970) (hereinafter cited as "Supp. Hearings") p. 43.

tatives of the employees of any railroad or of the Corporation." One labor witness explained that,

> [t]he . . . amendment we propose would modify the language of Section 307(a) . . . so as to provide that any aggrieved party, including employee representatives, could institute legal proceedings for violations of the law . . . .
>
> *As the bill now reads, only the Attorney General, except in cases involving a labor agreement, could bring actions.* [Supp. Hearings p. 134, emphasis added].[14]

Secretary of Transportation Volpe was asked by the Committee to comment on these proposed changes. In response he furnished the Committee with a letter in which he stated that he did not object to that portion of the proposed amendment which would allow suits against railroads as well as Amtrak. On the other hand, concerning the proposal to amend the bill to permit suits by any "aggrieved person," he stated:

> Sanctions are normally imposed by the Government. Consequently, *I would be opposed to permitting "any person" to seek enforcement of section 307. I would have no objection, however, if the section were revised to permit employee representatives, as well as employees affected, to seek equitable relief.* [Supp. Hearings p. 85, emphasis added.]

The Committee redraft of Section 307 and the bill as finally enacted are in exact conformity with Secretary Volpe's recommendations. Railroads were added to its reach, but labor's other proposal, which would have

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[14] See also Supp. Hearings at pp. 119, 122, 141.

permitted suit by any aggrieved party, was completely rejected and Secretary Volpe's language adopted instead.

The case is thus similar to *National Automatic Laundry and Cleaning Council* v. *Schultz*, 443 F.2d 689 (D.C. Cir. 1971) in which the court likewise found clear indication of legislative purpose in Congress' rejection of amendments designed to limit the reach of a broad remedial provision.[15] That the rationale for rejecting the amendment in the *National Automatic Laundry* case was articulated by a Congressman and in this case was articulated by the cabinet officer principally responsible for overseeing the subject program is irrelevant. The intent of Congress can properly be divined from its acceptance of an Executive branch recommendation as well as from statements made during floor debate. Indeed, the intention of the Congress is even more evident here than in *National Automatc Laundry*. Here Congress did not simply ignore or reject labor's proposal but instead carefully adopted that portion of the suggested amendment which Secretary Volpe endorsed, rejected the specific portion he opposed, namely, the suggestion that any "aggrieved person" should be able to bring suit, and instead adopted his alternative formulation permitting suit by the Attorney General, employees and their representatives.

The court below acknowledged the existence of this legislative history but discounted its significance. Cit-

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[15] "In the matter before us there is not merely silence, proposals languishing without any Congressional action, but positive action by Congress rejecting the limiting amendments." [443 F.2d at 706].

ing *Trailmobile Co.* v. *Whirls,* 331 U.S. 40 (1947), the court stated that it was unwise to rely on statutory changes made in Congressional committees without explanation. In the *Trailmobile* case, however, the legislative history was entirely inconclusive; there were no comments from *any* source whatever concerning the issue involved. In this case there was an abundance of comment. Two prominent labor spokesmen vigorously requested a specific change in statutory language. The Secretary of Transportation urged that this broad proposal be rejected and suggested an alternative formulation which was subsequently adopted. In view of this clear legislative history, it hardly requires a "strained process of deduction," as the court below viewed the matter (SA 36), to realize that Congress consciously and carefully chose not to permit all allegedly aggrieved parties to maintain suits for supposed violations of the Amtrak Act.

By suggesting that only reported debates or formal statements by members of Congress are useful indicia of intent, the court below has taken too narrow a view of the legislative process. This approach ignores the fact that Congressional committees bear the principal burden of formulating precise legislative language, and it is their actions and decisions which most accurately evidence the nuances of statutory meaning.

In drafting Section 307, the House Committee on Interstate and Foreign Commerce heard comment on and then rejected labor's proposal to allow any injured party to sue and adopted a counterproposal by the Secretary of Transportation. While individual opinions of private witnesses at committee hearings may sometimes be of doubtful value in determining legisla-

tive intent,[16] courts have traditionally deferred to the opinion of the administrative officer statutorily charged with administration of the act. *See, e.g., Red Lion Broadcasting Co., Inc.* v. *FCC*, 395 U.S. 367, 381 (1969); *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 433-34 (1971); *United States* v. *City of Chicago*, 400 U.S. 8, 10 (1970); *Lewis* v. *Martin*, 397 U.S. 552, 559 (1970); *Bowman* v. *Department of Agriculture*, 363 F.2d 81 (5th Cir. 1966); *Philadelphia Television Broadcasting Co.* v. *FCC*, 359 F.2d 282 (D.C. Cir. 1966). Some federal courts have recently viewed this deference as mandatory in the absence of clear, compelling language to the contrary. "The Secretary's interpretation . . . if reasonable, must be given effect." *Alexander* v. *Richardson*, 451 F.2d 1185, 1187 (10th Cir. 1971). The Secretary of Transportation has substantial responsibility for establishing the Amtrak program and supervising its operation,[17] and certainly his opinion (that the language he proposed for Section 307 would give the Attorney General exclusive enforcement power in non-labor cases) is entitled to great weight.

Furthermore, the Attorney General has taken the position that "in non-labor agreement cases, Section 307 of the Act . . . reserves to the Attorney General the exclusive right to sue Amtrak or any railroad for

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[16] *But see, Chicago & Northwestern Railway Company* v. *United Transportation Union*, 402 U.S. 570 (1971), in which this Court, in construing the Railway Labor Act, attributed great weight to the statements of spokesmen of railroad management and labor made in hearings before the House Committee on Interstate and Foreign Commerce.

[17] See, for example, 45 U.S.C. §§ 521, 522, 548, 563, 602, 621, and 645.

actual or threatened violation of the policies and provisions of the Act."[18] This interpretation was recently reaffirmed in the Memorandum for the United States filed by the Solicitor General in support of the petition for a writ of certiorari in this case. As this Court has noted, courts should respect the construction of an administrative statute given "by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." *Power Reactor Development Co.* v. *International Union of Electrical, Radio and Machine Workers*, 367 U.S. 396, 408 (1961).

The court below also sought to demonstrate Congress' intent to allow private enforcement of the Act by showing that it specifically denied judicial review in other sections of the Act. (SA 38). Section 202 of the Act (45 U.S.C. § 522) states that the Secretary's designation of which railroad lines shall constitute the basic system "shall not be reviewable in any court." The Court of Appeals argued that Congress therefore knew how to draft decisively when it wished to limit judicial review and would have put the word "only" before the phrase "upon petition of the Attorney General . . ." had it wished to preclude suits by anyone else.

There is no logical or practical inconsistency between Section 202 and petitioners' construction of Section 307. Section 202 involves a Government official's

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[18] *See* letter of Acting Assistant Attorney General E. Grey Lewis, dated September 6, 1972, set out as Appendix E to the certiorari petition (p. 42a).

exercise of administrative authority of the sort normally reviewable by courts. Section 307, on the other hand, involves suits against private railroad companies and Amtrak, which is explicitly not an agency of the Federal government. Having withdrawn the designation of the basic system from judicial review in Section 202, it would certainly have been anomalous for Congress to provide disappointed train passengers in Section 307 with an equally effective method of fighting the elimination of their lines, namely, institution of expensive and protracted actions to enjoin the discontinuances.

The analysis of the legislative history by the court below also rests on the assumption that Section 307 is "redundant" (SA 31) and that Congress "might well have believed, notwithstanding the remarks of railway labor representatives, that Section 307 as originally drafted did not bar suits by all injured and aggrieved parties." (SA 36). While these and other explanations are, of course, "conceivable" (to use the court's language, SA 36), they do not appear likely.

As distinguished from such speculations, the Secretary of Transportation, the Attorney General, and the Solicitor General have all advanced the more logical explanation that Section 307 simply means what it says, namely, that to invoke the jurisdiction of the District Courts, suits to restrain violation of the Amtrak Act must be brought by affected employees, their representatives, or the Attorney General. Petitioners submit that the legislative history of the Section, its plain language, and the purposes of the Act all confirm this construction.

II. THE DECISION BELOW WOULD SERIOUSLY FRUSTRATE THE FUNDAMENTAL PURPOSES OF THE AMTRAK ACT.

Not only does the decision by the Court of Appeals misconstrue the language and the legislative history of Section 307. In addition, that court's interpretation of Section 307 would severely hamper the achievement of the statute's purpose. Indeed, a decision by this Court affirming the holding below that any railroad passenger, passenger association, or other aggrieved person may sue Amtrak or a railroad for any supposed violation of this comprehensive legislation could so hobble this program for saving the nation's rail passenger service as to effectively prevent fulfillment of that important legislative goal.

The House Report which accompanied the bill that became the Amtrak Act stated that "the overriding purpose of this legislation is to preserve and promote intercity rail passenger service . . ." (H.R. Rep. 91-1580, p. 2). Accomplishment of this goal, Congress concluded, would require a national management corporation which could weld the passenger operations of numerous railroad companies into a single, cohesive system and could act decisively and innovatively to make that system a viable transportation mode as quickly as possible.[19] Amtrak has already made significant progress toward achieving that goal,[20] but

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[19] See pages 5-7, *supra*.

[20] The Amtrak Act, as amended, 45 U.S.C. § 645, (Supp. II 1972), required the Secretary of Transportation to transmit to Congress by March 15, 1973, a comprehensive report on the effectiveness of the Act and the Corporation in promoting intercity rail passenger service. That report is filed as Exhibit A to this brief and concludes that, during its first 22 months of operation, "Amtrak has

the program is still in a formative period, and there is a great deal yet to do.[21] During the months and years ahead, Amtrak will need to take countless actions to improve and streamline the national railroad passenger system it was created to manage. Of necessity, many of these actions will affect very large numbers of passengers and other persons.

Under the decision below, each of the several million passengers who ride Amtrak trains is a potential plaintiff in a suit to enjoin some Amtrak action he does

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taken important steps to improve intercity rail passenger service." (Ex. A, p. 4). Several indicators of such progress are cited:

> "Ridership in the period May-November 1972 was 11% higher than in the corresponding period of 1971.
>
> The net cash loss from operations in FY 1972 was $152.7 million; the FY 1973 loss is estimated at $124.0 million. Under the route and service levels recommended in this report it is estimated to decline further to $95.6 million in FY 1974.
>
> Revenue increased from $150.5 million in FY 1972 to an estimated $179.4 million in FY 1973.
>
> Amtrak acquired its own fleet of 1550 passenger cars and 420 locomotives. A major refurbishment program is underway.
>
> New turbine powered trains have been either purchased or ordered from U.S., Canadian, and French manufacturers.
>
> Amtrak simplified tickets, timetables and fares; a new computerized reservation system is being implemented.
>
> On-train services have improved measurably; train directors are being placed on most trains to supervise services." (Ex. A, p. 4).

[21] "Programs actively underway provide for improving equipment, reservations, schedules, fare structure, food service, and other passenger comforts. Administrative changes necessary to the efficient and economic operation of the corporation are also underway, and include improved data collection on revenue, expenses and ridership, improved cost control, auditing of contracts with participating carriers and assuming direct control over functions solely related to intercity passenger service." (Ex. A, p. 3).

not like.[22] Virtually everything Amtrak does could be made the basis of an injunctive action by an "aggrieved" passenger—the discontinuance of a particular train, a revision in schedules and timetables, changes in on-board services (as, for example, substituting snack bar service in place of a dining car, or reclining parlor chairs in place of a sleeping car), revamping of ticketing and reservation procedures, a redesignation of intermediate stops along a particular route, and so on.

Furthermore, the decision below is not limited to railroad passengers, but expressly encompasses all allegedly injured and aggrieved parties. (SA 43). Thus, Amtrak actions in purchasing new rolling stock, refurbishing present equipment, upgrading roadbed, changing mail and baggage car arrangements, and many other matters could easily become the subject of injunctive actions brought by affected parties other than passengers.[23]

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[22] In 1972 Amtrak trains carried approximately 16,600,000 passengers, about 96% of the nation's total number of intercity rail passengers for that year. *See* Hearings before the Subcommittee on Department of Transportation and Related Agencies of the House Committee on Appropriations, 93rd. Cong., 1st Sess., (1973) Part 2—p. 1054.

[23] *Compare* District Judge John P. Fullam's observation, quoted in *In re Penn Central Transportation Co.*, 446 F.2d 1109, 1113 (3rd Cir. 1971), *cert. denied* 405 U.S. 918 (1972);

> "It is a matter of common knowledge that very many interested persons and governmental entities and agencies question the adequacy of intercity rail passenger service proposed to be supplied by Railpax [Amtrak]. It is not inconceivable that, if they were free to do so, large numbers of such persons, entities and groups might seek to litigate particular issues in a wide variety of forums."

The effect of this kind of litigation on the ability of Amtrak to carry out its Congressional mandate can best be appreciated by focusing on a single example. In its Report to Congress of March 15, 1973, the Department of Transportation set forth a detailed analysis of Amtrak's present route structure. The report pointed out that the establishment of an optimum national route system was a dynamic process and would require continued re-examination and adjustment. (Ex. A, p. 79). On the basis of the same eight criteria initially used to designate the basic system, the report concluded that most of Amtrak's routes should be left intact but that certain modifications were in order because of the excessive deficits experienced on those lines. Thus, the Department recommended that Amtrak discontinue the Chicago-Florida train (deficit for fiscal year 1972—$5.1 million), the New York-Kansas City train ($5 million deficit), and the Washington, D.C.—Parkersburg, West Virgina train ($700,000 deficit) and that service be reduced and rearranged on the Chicago-Houston run ($4.5 million deficit) and Chicago-Newport News train ($4.4 million deficit). (See Ex. A, pp. 80-98).[24]

If, pursuant to these recommendations, Amtrak seeks to discontinue the New York-Kansas City train in order to achieve a viable national system, many passengers who ride that train may feel themselves "aggrieved." If any one of these passengers files a

[24] These recommendations closely coincided with those made by Amtrak and its consultant McKinsey & Company. (Ex. A, p. 6). In each case, where the Department of Transportation recommended discontinuance of a particular service, "well-developed alternatives [i.e., other transportation modes] are available." (Ex. A, p. 83).

complaint[25] advancing even a superficially plausible theory under which such a discontinuance would violate the Amtrak Act, a District Judge unfamiliar with the intricacies of the statute may feel that preliminary injunctive relief is necessary to preserve the status quo until the merits of the matter can be fully briefed and adjudicated.[26] After a decision on the merits in the District Court, there is the possibility of further substantial delay if an injunction or restraining order is obtained while the case is on appeal. Even if Amtrak ultimately wins such a suit, the continued operation of the uneconomic train during the litigation would cost Amtrak (and thus the federal treasury) thousands or even millions of dollars.

Moreover, since the New York-Kansas City train passes through nine states, a number of injunctive actions could easily be filed in several different Dis-

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[25] Under the Act as presently drafted, 45 U.S.C. § 564(b)(3), discontinuances of basic system trains, such as New York-Kansas City, are subject to the provisions of Section 13a of the Interstate Commerce Act. Because of the extensive monitoring of Amtrak by the Executive Branch and Congress, the Department of Transportation has urged Congress to exempt Amtrak from such ICC jurisdiction to avoid the possibility that Amtrak could be required "to perform an uneconomic service, through an extended period of litigation, at substantial cost to the general taxpayer." (Ex. A, p. 108). Unless they have been operated for two continuous years, experimental trains not required by the designated basic system, like the Washington, D.C.-Parkersburg train, can be discontinued by Amtrak at any time without ICC approval. 45 U.S.C. § 564(b)(2).

[26] Such a temporary restraining order was granted, then extended, by Chief Judge Blumenfeld in *Wood* v. *National Railroad Passenger Corporation*, 341 F.Supp. 908 (D. Conn. 1972), but later dissolved when Amtrak prevailed on the merits.

trict Courts,[27] possibly located in different Circuits. If only one of these suits resulted in a preliminary injunction, the planned train discontinuance could be delayed until the conflicting decisions of the various District Courts were resolved by a Court of Appeals or, perhaps ultimately by this Court.

It was exactly these considerations which the Solicitor General cited in urging this Court to grant certiorari in the present case:

> Amtrak deficits resulting from operation of uneconomic and unneeded trains must be minimized if Amtrak's limited resources are to be put to the best possible use in the permanent improvement of the rail passenger system. The court of appeals' decision, however, is likely to frustrate that purpose.
>
> The decision is likely to lead to a large number of lawsuits, filed by states, localities, or private persons or associations, designed to delay or defeat Amtrak's curtailment or elimination of uneconomic or unneeded service. This is particularly likely when the only alternatives are loss of service or subsidies from local budgets for the service (45 U.S.C. 563(b)). Moreover, it is probable that stays of the discontinuance of service will be issued in many of those cases, thereby requiring Amtrak to continue the service for the duration of the litigation. The likely result of

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[27] When Amtrak made certain changes in its "Empire Service" between New York City and Buffalo, including the discontinuance of certain trains between New York City and Albany, two separate suits were brought to enjoin those changes—one by the Commissioner of Transportation of the State of New York in the United States District Court for the Northern District of New York, another by the City of New York in the United States District Court for the Southern District of New York. See *Schuler et al* v. *National Railroad Passenger Corporation et al.*, No. 72-CV-211 (N.D. N.Y.) and *City of New York* v. *National Railroad Passenger Corporation, et al.*, No. 72 Civ. 1988 (S.D.N.Y.).

> permitting such suits to be maintained, therefore, is a further drain on Amtrak's limited resources and their diversion into activities that are inconsistent with and unnecessary to the Congressional plan to improve and rehabilitate intercity rail passenger service. (Memorandum for the United States, pp. 4-5).

The burden imposed upon Amtrak by even a single preliminary injunction would not be limited merely to the direct costs of the continued operation of the particular train involved. Substantial amounts of rolling stock scheduled for use in other locations would be tied up. Planned schedule changes in the operation of other trains might well be made impossible because of problems with connections, personnel transfers, layovers, and so forth. In short, because the viability of the overall passenger system depends on the efficient coordination of many different services, one major injunctive action could disrupt Amtrak's operations as severely as a multitude of lawsuits.

The inability of individual passengers to bring private lawsuits would not, of course, leave these passengers remedy-less or grant Amtrak freedom to disregard the policies and provisions of its governing Act. Running a national system of railroad passenger trains is hardly an inconspicuous business, and everything Amtrak does is closely watched and monitored by a variety of interested governmental agencies which can certainly be counted upon to act on their own initiative, as well as in response to significant complaints, to insure that Amtrak obeys the letter and spirit of the law. Under the Act, the Secretary of Transportation, the Interstate Commerce Commission, and the Corporation itself are required to submit to the President and the Congress extensive annual re-

ports on the state of the program, and Amtrak is also required to submit detailed monthly reports on its operations. (45 U.S.C. § 548). Several Congressional committees are keenly interested in Amtrak and have held hearings to oversee its progress.[28] And the Attorney General has established an Amtrak section within the Department of Justice to insure that the program is being carried out in conformity with the terms and purposes of the Act.[29]

If Amtrak attempts some major program which is inconsistent with achievement of the desired legislative goal, one can be sure that interest groups like the National Association of Railroad Passengers will promptly bring the matter to Congress' attention.[30] And if such groups should believe that a specific action by Amtrak violates the Act, they may present that con-

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[28] Since enactment of the Amtrak Act, the Senate Commerce Committee and the House Interstate and Foreign Commerce Committee have each held two sets of hearings (in the spring of 1972 and the spring of 1973) to review Amtrak's progress under the Act. Amtrak has also been subject to annual appropriation hearings in both the Senate and the House.

[29] Supplemental Memorandum of National Railroad Passenger Corporation filed in the Court of Appeals September 22, 1972 (hereafter "Supp. Memo.") p. 5.

[30] Anthony Haswell, President of respondent National Association of Railroad Passengers, has frequently testified before the House Interstate and Foreign Committee and other Congressional Committees. (SA 16). In the hearings leading to passage of the Amtrak Act, he testified that,

> "I feel that it would be unnecessary and inconsistent to, in effect, put a lot of teeth into the hands of some other Federal agency to make sure that the Corporation is ordered to do the very thing that it is being brought into existence to do. This Corporation will not have its attention diverted by having to run freight trains or looking around for juicy investments in real estate, or whatever. Its purpose for being

tention to the Attorney General and request that he seek an injunction.[31] The Attorney General is well suited to act as an overall "watchdog" of the Amtrak program and to decide what lawsuits should be brought and what relief sought in order to insure compliance with the essential provisions of the legislative charter. If, however, all actions taken or proposed by Amtrak may be enjoined, even temporarily, at the behest of any "aggrieved" passenger or other private party, it will truly be impossible for Amtrak to carry out the complicated and closely coordinated planning or the innovative and responsive action on which the achievement of its Congressional mandate is premised.

III. THE DECISION BELOW MISAPPLIES 28 U.S.C. §1337 TO THIS CASE.

In the final portion of its opinion, the Court of Appeals finds support for its decision in a novel theory which was never briefed or mentioned by the parties below. Under this theory (SA 43), Section 307 of the Amtrak Act gives the Attorney General the right to seek injunctions for violations of the Act and for any action, practice or policy which, though not a

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is to run passenger trains. Therefore, I am not concerned about the absence of strong controls or directives and so forth either in the statute itself, enforceable by the courts, or in the hands of some other agency. *I am certain, if, after the first year, we are not getting the results that we want along these lines, the Congress will take a very thorough look. The statute requires that reports must be given every year to the Congress. So, I am willing to set this thing up with positive incentive and encouragement and let it go at least for a while.*" (Supp. Hearings, p. 178, emphasis added.

[31] Indeed, respondent's present complaint was studied by the Amtrak section at the Department of Justice which concluded, after consultation with the Department of Transportation, that the Amtrak-Central of Georgia contract does *not* violate the Act. (Supp. Memo. p. 5).

direct violation, is nonetheless inconsistent with the purposes of the Act, while Section 1337 of Title 28, United States Code[32] gives all aggrieved persons the right to sue Amtrak and the railroads for actual violations of the Act. (SA 31).

This analysis, which would make a nullity of Section 307, ignores the well-established principle of statutory construction that "specific terms prevail over the general in the same or another statute which might otherwise be controlling." *Fourco Glass Co.* v. *Transmirra Prods. Corp.*, 353 U.S. 222, 228-29 (1957); *see also MacEvoy Co.* v. *United States*, 322 U.S. 102, 107 (1944); *Ginsberg & Sons* v. *Popkin*, 285 U.S. 204, 208 (1932). The specific language of Section 307 is expressly jurisdictional—"the district court . . . shall have jurisdiction . . . upon petition of the Attorney General"—and even fixes the venue for actions seeking to restrain violations of the Act, i.e., "the district in which the Corporation or other person resides or may be found." Such a specific jurisdictional grant in a particular Congressional enactment must supersede the general jurisdictional grant of 28 U.S.C. § 1337. If this were not so, it would be meaningless for Congress to insert specific jurisdictional provisions in any of the vast number of statutes it has enacted under the commerce clause since any allegedly aggrieved party could ignore such specific jurisdictional limits—of which there are many—by invoking the general jurisdiction of the District Court under Section 1337.

But this is not the law. For example, in the recent case of *Barlow* v. *Collins*, 397 U.S. 159, 167 (1970),

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[32] 28 U.S.C. § 1337 provides that "the district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

relied upon in the decision below (SA 24-25), this Court cited *Switchmen's Union of North America* v. *National Mediation Board,* 320 U.S. 297 (1943) for the proposition that "a clear command of the statute will preclude [judicial] review, and such a command may be inferred from its purpose." *Switchmen's* held that the "broad grant of general jurisdiction" contained in the predecessor to 28 U.S.C. § 1337 could not be invoked "in the face of the special circumstances" present in that case, namely, Congress' obvious efforts to protect the National Mediation Board's handling of the "explosive" problem of collective bargaining unit certification and the "highly selective manner in which Congress has provided for judicial review" under the Railway Labor Act. (320 U.S. at 300, 303, 305). The Court's opinion declares:

> Congress for reasons of its own decided upon the method for the protection of the "right" which it created. It selected the precise machinery and fashioned the tool which it deemed suited to that end. Whether the imposition of judicial review on top of the Mediation Board's administrative determination would strengthen that protection is a considerable question. All constitutional questions aside, it is for Congress to determine how the rights which it creates shall be enforced. . . . In such a case the specification of one remedy normally excludes another. [320 U.S. at 301].[33]

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[33] See also *Fleischmann Distilling Corp.* v. *Maier Brewing Co.*, 386 U.S. 714 at 720 (1967): "Where a cause of action has been created by a statute which expressly provides the remedies for vindication of the cause, other remedies should not readily be implied." *Cf. Schilling* v. *Rogers,* 363 U.S. 666 at 674 (1960): "The point is that in this Act Congress was advertent to the role of courts and an absence in any specific area of any kind of provision for judicial participation strongly indicates a legislative purpose that there be no such participation."

The Court of Appeals seeks to distinguish the *Switchmen's* case on the ground that there a "neutral administrative body"—the Mediation Board—was resolving disputes between competing interests. (SA 44). But the Court in *Switchmen's* talked in terms of Congressionally fashioned "machinery" and "tools," not the existence of a particular administrative body. It is not only courts and boards which can provide protection to affected individuals. As noted above, in framing the Amtrak Act Congress established several specific procedures and provisions to insure that the subject program would be carried out in the best interests of the traveling public:

—The Secretary of Transportation was required to solicit and consider the views of interested persons, before finalizing his proposal for the "basic system." (45 U.S.C. § 522).

—The majority of Amtrak's Board of Directors is appointed by the President of the United States. (45 U.S.C. § 543).

—Amtrak is made subject to many, but not all, provisions of the Interstate Commerce Act. (45 U.S.C. § 546).

—Amtrak, the Secretary of Transportation, and the Interstate Commerce Commission are all required to submit to the President and the Congress annual reports on progress made under the Amtrak program and recommendations for the future, and Amtrak is required to submit to the Congress and release to the public detailed monthly reports on its operations. (45 U.S.C. § 548).

—Accounts of the Corporation are to be audited annually by independent certified public accountants and, if appropriate, the Comptroller General. (45 U.S.C. § 644).

—The Attorney General is empowered to seek injunctions for any actual or threatened violation of the Act. (45 U.S.C. § 547).

Surely here, as in *Switchmen's*, it is clear that Congress has selected the machinery which it deems suited to protection of persons affected by the Amtrak program. To hold, in the face of these specific safeguards, that any aggrieved person may also sue Amtrak under the general jurisdictional grant of 28 U.S.C. § 1337 is to disregard entirely Congress' efforts to protect Amtrak from unnecessary and potentially disruptive litigation. As the Court noted in *Switchmen's*,

> Where Congress took such great pains to protect the Mediation Board in its handling of an explosive problem, we cannot help believe that if Congress had desired to implicate the federal judiciary and to place on the federal courts the burden of having the final say on any aspect of the problem, it would have made its desire plain. [320 U.S. at 303.] [34]

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[34] The court below also noted that Switchmen's grew out of a field long relegated to conciliation and mediation, while railroad discontinuances have historically been subject to administrative and judicial review. (SA 44-45) But the Amtrak Act expressly embodies a radical departure from past practice—under 45 U.S.C. § 561(a), any railroad participating in the Amtrak program need only file a thirty-day notice to discontinue an intercity train, the old hearing and review procedure of Section 13a of the Interstate Commerce Act having been there dispensed with. In light of this sharp break with the past, it hardly seems likely that Congress would attempt to sneak in through the back door of Section 1337 an even broader right of judicial recourse than had previously existed when federal courts could only review ICC decisions in discontinuance cases on a "substantial evidence" basis. *State of New York* v. *United States*, 299 F.Supp. 989, 994 (N.D. N.Y. 1969, Waterman J.), *aff'd* 396 U.S. 281 (1970).

Furthermore, even assuming that Section 1337 were to give the District Court jurisdiction to entertain the present suit, which we deny, the question would remain whether a passenger association has any enforceable cause of action on which to sue. As this Court stated in *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 249 (1951), 'the Judicial Code, in vesting jurisdiction in the District Courts, does not create causes of action, but only confers jurisdiction to adjudicate those arising from other sources . . . .'' *Cf. Bell* v. *Hood*, 327 U.S. 678 (1946).

Section 1337 of the Judicial Code vests jurisdiction in the District Courts only for suits "arising under any Act of Congress regulating commerce." Thus, we are necessarily remanded to the Amtrak Act to see if that Act gives rise to any such private cause of action as the National Association of Railroad Passengers here asserts. Clearly there is no section of the Act which does so. Although Congress was aware of the kind of complaints passengers could be expected to have in regard to Amtrak operations,[35] it did not set forth in the Act any private right of action for railroad passengers in particular or "aggrieved parties" in general. Congress did, however, confer limited rights of action on two specific groups—employees and their representatives in cases involving labor agreements (45 U.S.C. § 547) and railroads seeking to recover compensation for the provision of facilities or services (45 U.S.C. § 562). It also vested the Attorney General with the general power to enforce the terms and purposes of the Act.

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[35] *See, for example*, S. Rep. 91-765, p. 4.

The conclusion of the court below that private suits are necessary to insure realization of the goals of the Amtrak Act rests on the unsupported premise that the Attorney General cannot or will not act aggressively and effectively to enforce the provisions of the Act. This premise is wholly unwarranted.[36] As noted above, the Attorney General has established an Amtrak section within the Department of Justice. In conjunction with the Department of Transportation, that section has reviewed various complaints about alleged violations of the Act, including those of the respondent. The Attorney General's ability to exercise his informed discretion in deciding which situations warrant judicial intervention is, as Secretary Volpe suggested to Con-

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[36] Cases such as *J. I. Case Co.* v. *Borak*, 377 U.S. 426 (1964), and *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), cited by the Court of Appeals for implying such a private right of action here are inapposite. Unlike the Securities Exchange Act of 1934 or the Voting Rights Act of 1965, the Amtrak Act does not seek to establish enforceable individual rights in a broad class of persons but attempts to save a threatened national resource for use by the public in general. Unlike the statutes in *Borak* and *Allen*, the Amtrak Act is not ambiguous; it clearly defines who may bring enforcement actions— the Attorney General. And the scope of possible violations is well within the Attorney General's enforcement power— while there may annually be hundreds or thousands of Security Act violations or voting frauds throughout the country, possible violations of the Amtrak statute are not so numerous as to suggest that the Attorney General cannot monitor the way Amtrak is conducting its business and bring suits therefor if necessary. In such circumstances, no private right of action should be implied. *Calhoun* v. *Harvey*, 379 U.S. 134 (1964); *Montana-Dakota Utilities Co.* v. *Northwest Public Service Co.*, 341 U.S. 246 (1951); *B.F. Goodrich Co.* v. *Northwestern Industries, Inc.*, 424 F.2d 1349 (3rd Cir. 1970), *cert. denied*, 400 U.S. 822; *Blaney* v. *Florida National Bank*, 357 F.2d 27 (5th Cir. 1966); *Noel Estate, Inc.* v. *Commercial National Bank in Shreveport*, 232 F.2d 483 (5th Cir. 1956).

gress,[37] one excellent reason for limiting the power to bring suit to the Attorney General.

In enacting the sanction section of the Communications Satellite Act of 1962 (47 U.S.C. § 743), on which Section 307 of the Amtrak Act is closely patterned, Congress was confronted with exactly the same argument—that the Attorney General would not adequately police the actions of the proposed Comsat corporation. Senator Hubert Humphrey and Attorney General Robert Kennedy both responded that legislation of this kind must be enacted on the assumption that the Attorney General will take appropriate action to safeguard the public interest,[38] and Congress enacted the section[39] in language virtually identical to that of Section 307.

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[37] See p. 15, *supra*.

[38] 108 *Cong. Rec.* p. 16697, August 16, 1962.

[39] 47 U.S.C. § 743 provides as follows:

(a) *Petition of Attorney General for equitable relief; venue.*

If the corporation created pursuant to this chapter shall engage in or adhere to any action, practices, or policies inconsistent with the policy and purposes declared in section 701 of this title, or if the corporation or any other person shall violate any provision of this chapter, or shall obstruct or interfere with any activities authorized by this chapter, or shall refuse, fail, or neglect to discharge his duties and responsibilities under this chapter, or shall threaten any such violation, obstruction, interference, refusal, failure, or neglect, the district court of the United States for any district in which such corporation or other person resides or may be found shall have jurisdiction, except as otherwise prohibited by law, upon petition of the Attorney General of the United States, to grant such equitable relief as may be necessary or appropriate to prevent or terminate such conduct or threat.

Certainly the present record provides no basis for asserting that the Attorney General cannot or will not take appropriate action to terminate actual or threatened violations of the Amtrak Act. There is thus no justification for concluding that private parties must be able to sue under 28 U.S.C. § 1337 in order to insure compliance with the terms and purposes of the Act.

CONCLUSION

The Amtrak Act was designed by Congress to deal with an emergency situation in the nation's railroad passenger service. As noted by the Court of Appeals for the Third Circuit,

> It has become painfully apparent that the condition of the nation's railroads is eroding daily. Services are being cut back, existing services are deteriorating, and the availability of working capital has become critically limited. Reacting to an ever worsening rail passenger crisis, Congress enacted the Rail Passenger Service Act of 1970, supra . . . . *The legislative history of the Act and the findings therein make clear that Congress regarded as imperative the timely implementation of the Act. In Re Penn Central Transportation Co.*, 457 F.2d 381, 386 (3rd Cir. 1972), emphasis added.

(b) *Punishment, liability or sanction under other provisions.*

Nothing contained in this section shall be construed as relieving any person of any punishment, liability, or sanction which may be imposed otherwise than under this chapter.

(c) *Duty of compliance with provisions of chapter and rules and regulations.*

It shall be the duty of the corporation and all communications common carriers to comply, insofar as applicable, with all provisions of this chapter and all rules and regulations promulgated thereunder.

The decision below holding that all aggrieved persons may sue Amtrak or any railroad in the District Courts to enjoin supposed violations of the Act misconstrues the language of the Act and its legislative history and threatens to severely frustrate Amtrak's efforts to achieve the important purpose for which it was created. For these reasons, petitioners respectfully submit that the decision below should be reversed.

Respectfully submitted,

WILLIAM O. BITTMAN
CURTIS E. VON KANN
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

Attorneys for Petitioner National Railroad Passenger Corporation

CHARLES A. HORSKY
WILLIAM D. IVERSON
888 16th Street, N.W.
Washington, D.C. 20006

Attorneys for Petitioners Central of Georgia Railway Company and Southern Railway Company

Of Counsel:

HOGAN & HARTSON
COVINGTON & BURLING